REPORT TO COUNCIL

City of Kelowna

Date:	November 12, 2012		
To:	City Manager		
From:	Land Use Management, Community Sustainability (GS)		
Application:	Z12-0065	**Owner(s):**	Danco Developments Ltd.
Address:	1650 KLO Road	**Applicant:**	Protech Consultants Ltd.
Subject:	Rezoning for the purpose of a future two lot subdivision.		
Existing OCP Designation:	Resource Protection Area		
Existing Zone:	A1 - Agriculture		
Proposed Zone:	RR1 & RR3 - Rural Residential 1 & 3		

1.0 Recommendation

THAT Rezoning Application No. Z12-0065 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of part of Lot 3, District Lot 131, ODYD Plan KAP77109, located on 1650 KLO Road, Kelowna, BC, from the A1 - Agriculture 1 zone to the RR1 - Rural Residential 1 and RR3 - Rural Residential 3 zones, as shown on Map "A" attached to the Report of the Land Use Management Department dated November 12, 2012 be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the issuance of a Preliminary Layout Review Letter by the Approving Officer;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch being completed to their satisfaction.

2.0 Purpose

The applicant is requesting an amendment to the zoning of the subject parcel located at 1650 KLO Road from the A1 - Agriculture 1 zone to the RR1 - Rural Residential 1 and RR3 - Rural Residential 3 zones. This rezoning is being pursued to facilitate a future two lot subdivision.

3.0 Land Use Management

The City of Kelowna is a mosaic of land uses with key areas of the City transitioning from urban to rural land use without warning. While there is undeniable beauty to this land use pattern on the surface, the mosaic is also inherently flawed in practical terms. In most cases the varied impacts of rural activities including but not limited to noise, smell, eroding soil, chemical application are not appreciated by those not engaged in agriculture in some form. An additional concern is the cumulative, albeit incremental loss of farm land to urban uses with agricultural land viewed as an affordable alternative to land designated for urban use. The loss of affordable

and sufficient agricultural land is a concern, especially when viewed through a longer term lens (i.e. a view to future generations).

Both Land Use Management staff and the City's AAC wrestled with the proposed rezoning and especially with the ALC decision-making leading to this application. In the end, the AAC members could not understand the logic of permitting development along Burtch Road and which went against everything that they cautioned against through the ALC exclusion file and which was supported by the ALC in their original refusal (see Anecdotal Comments, Section 7.0, below).

While Land Use Management staff do view the exclusion similar to the AAC, staff also recognize the value in rehabilitating the remainder of the subject property to a crop standard. This condition of exclusion is a significant mitigating factor given that the subject property is known to have agricultural limitations (contaminated fill and water table issues) in the northern portion and has remained fallow for years. Rezoning to RR1 and RR3 permits the owner to proceed with conditions including the rehabilitation of the debilitated portions[1] of the 1.3 ha remainder to "an agricultural standard which permits cropping, and not merely forage crops" and the provision of irrigation infrastructure.

The remediation of the 1.3 ha remainder to a crop standard reflects a potential win-win. The rezoning and two lot subdivision provide the owner the option of selling either the 0.7 ha (RR3) portion, or the 1.3 ha (RR1) portion to help finance the rehabilitation and irrigation improvements required prior to being authorized for exclusion. The two parcels, while inherently less agriculturally viable than the original single parcel, will each have improved agricultural potential relative to present. This reality is sufficient for Land Use staff to support the proposal.

While extensive interface areas already exist within the City, agricultural policy and regulations (i.e. Agriculture Plan, OCP) have been developed and endorsed to prevent future interface issues. Policies which call for the protection of agricultural land and preserving the future potential of farm land by not supporting further subdivision can be found in the OCP (see Section 5.2 below); while others seek to ensure the integrity of ALR land by establishing a defined urban/agricultural boundary utilizing existing roads, topographic features, or watercourses where possible (Section 5.4).

While staff support the proposed rezoning, a corollary is that future plans for the 0.7 ha portion along Burtch Road that involve an OCP amendment may not be supported for the numerous reasons identified within this report with respect to the need to preserve agricultural land and also to limit the future potential for rural/urban interface.

4.0 Proposal

4.1 Project Background

The subject property has significant background in terms of land use consideration as illustrated below.

2007/2008

- Request for exclusion received by the City of Kelowna.
  - Stated intent was multi-family residential use (e.g. "RM5 Zoning, similar to The Verve on Glenmore Rd").
- Agricultural Advisory Committee (AAC) did not support the proposed exclusion.

[1] A report prepared by a qualified professional (soils agrologist) must be submitted to the ALC prior to the 0.7 ha portion being excluded.

- The need to retain agricultural land within the City cited as the primary reason for non-support.
- Burtch Road marks a defensible boundary between urban and rural/agricultural uses and the boundary should be preserved.
- The boundary would be weakened through approval of this exclusion and would result in an undesirable precedent.
- The land has good potential for arable agriculture, provided the drainage of the land is improved.

- City staff did not support the proposed exclusion.
  - Shared all of the AAC's concerns.
- Council elected to forward the application to the ALC with "No Comment".
- ALC rejected the application as the applicant had not met the ALC's notification requirements.
- Proposal reconsidered by Council following proper advertising and this time supported.
- ALC refused the proposed exclusion (see Resolution #760/2008, attached).
  - Concluded that an exclusion could "raise the potential that farm/residential conflicts will arise about smells, noise and spraying".
  - Exclusion would "raise expectations that land use change is imminent".
  - "Burtch Road represents a defensible boundary between urban and agricultural uses and the land is suitable for agricultural development"[2].
  - "Concerned that exclusion and residential development of this property would signal to Kelowna's development community that the Commission might support excluding the remaining farmlands fronting onto KLO and Benvoulin Roads"[3].

2010

- First reconsideration requested of the ALC (bases on new evidence submitted, i.e. landfilling) by the owner and which led to Resolution #2382/2010.
  - ALC authorized partial exclusion (0.7ha north of the irrigation ditch) of the original 2.0 ha requested subject to the following conditions:
    - the rehabilitation of debilitated portions of the 1.3 ha remainder;
    - the erection of a 2 metre high chain link fence along the north, south and east boundaries of the 0.7 ha excluded area and fencing the westerly and southerly edge of the remainder;
    - the planting of a cedar hedge along the south and east boundary (minimum 1 meter high trees along the inside of the fence); and,
    - residential building setbacks of 10 meters from the south property boundary.
- Reconsideration of the orientation of the 0.7 ha exclusion requested and which led to Resolution #2382A/2010.
  - ALC authorized new north/south orientation requested subject to the following additional condition:
    - Registration of a covenant prohibiting residential structures within 10 meters of the east and north property boundary and prohibiting structures taller than two storeys.

2011

[2] Resolution #760/2008, p.3.
[3] Ibid.

- Third reconsideration requested of the ALC (re: height limitation).
  - ALC authorized 3 storey structure subject to the following additional conditions:
    - a 16.74 metre setback from the east property line; and
    - remediation of the 1.3 ha remainder to a crop standard (not merely forage crops).

4.2 Project Description

The rezoning request is necessary to complete the two lot subdivision, a subdivision request which is consistent with the ALC approved exclusion. As the minimum parcel sizes are insufficient for the A1 zone (2.0 ha in the ALR), Council must first approve the rezoning of the parcel to a split zone (RR1 and RR3). Rural residential zoning is consistent with the City's OCP Future Land Use designation (Resource Protection Area).

The applicant is seeking the rezoning and subdivision in an effort to meet the ALC's exclusion conditions, which included that "the conditions of approval must be completed within three (3) years from the date of this decision" (December 2010).

The applicant has verbally acknowledged that the rural residential zoning for the 0.7 ha portion excluded is not the ultimate intent. Rather, staff understand that the intent is multi-family residential development and which would require an OCP amendment and second rezoning.

4.3 Site Context

The 1.97 ha (4.86 acres) parcel is located on KLO Road, immediately east of the proposed Burtch Road extension. The property is bound on the east, north, and south by properties having ALR status. The City of Kelowna's OCP designates the future land use of the subject property as Resource Protection Area (REP).

The subject property is adjacent to a number of agriculturally zoned properties. However, as the subject property is on the fringe of the ALR, land uses such as public, institutional and a variety of residential designations are also found in the area. The existing parcel does not have any structures and it has been vacant for many years and is not being farmed.

The subject property has a constructed channel or ditch[4] for irrigation which currently runs east/west through the property approximately 2/3 of the way up from KLO. The ditch then flows north along the western property line where it enters a piped system. The water re-emerges on RDCO lands (1456 KLO Road) approximately 300 metres from the point of entry in a ditch.

There is also evidence that portions of the subject property have received contaminated fill including sand and potentially salt from snow clearing efforts.

Parcel Summary:

Parcel Size:	1.97 ha (4.86 ac)
Elevation:	350 m

[4] The irrigation ditch is operated by the Mission Creek Water Users' Group.

Figure 1: Subject Property and Proposed RV Site (in the foreground) Looking East Along Byrns Road

Figure 2: Subject Property and Proposed RV Site (in the foreground) Looking North from Byrns Road

4.4 Subject Property Map: 1650 KLO Road

4.5 Zoning of Adjacent Property

The subject property is located north of KLO Road and east of Burtch Road. The surrounding properties are zoned as follows:

Direction	Zoning	ALR	Land Use
North	A1 - Agriculture 1	Yes	Munson Pond/Future Park
South	A1 - Agriculture 1	No	Rural Residential
East	A1- Agriculture 1	Yes	Agricultural
West	RM4 - Transitional Low Density Housing	No	Multi-family Residential

5.0 Current Development Policies

5.1 Zoning Bylaw 8000

Section 7.6.1 Minimum Landscape Buffers[5]

A landscape buffer is required for all land abutting ALR land where non-farm uses exist. The minimum buffer shall be 3.0m wide and include an opaque barrier immediately adjacent to the boundary(s) abutting the ALR on the urban side of the property. This standard may be replaced or modified as a result of conditions of a decision by the Land Reserve Commission. The buffer area shall not be included in the required setback for Rural and Urban Residential zones.

[5] City of Kelowna Zoning Bylaw - Section 7 - Landscaping and Screening; p. 7-5.

5.2 2030 Official Community Plan: Greening Our Future

Objective 5.33 Protect and enhance local agriculture[6].

Policy .1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Policy .4 Transition Uses. Consider complementary agricultural land uses such as urban agriculture (as defined in the Zoning Bylaw) along the urban-rural interface that act as a transition between existing urban development and farming operations.

Policy .8 Subdivision. Maximize potential for the use of farmland by not allowing the subdivision of agricultural land into smaller parcels (with the exception of Homesite Severances approved by the ALC) except where significant positive benefits to agriculture can be demonstrated.

Farm Protection DP Guidelines[7]

Objectives

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

Guidelines

1.1 On properties located adjacent to agricultural lands, design buildings to reduce impact from activities associated with farm operations. Design considerations include, but are not limited to maximizing the setback between agricultural land and buildings and structures, and reducing the number of doors, windows, and outdoor patios facing agricultural land;

1.2 On agricultural lands, where appropriate, locate all buildings and structures, including farm help housing and farm retail sales, within a contiguous area (i.e. homeplate). Exceptions may be permitted where the buildings or structures are for farm use only;

1.3 On agricultural and non-agricultural lands, establish and maintain a landscape buffer along the agricultural and/or property boundary, except where development is for a permitted farm use that will not encourage public attendance and does not concern additional residences (including secondary suites), in accordance with the following criteria:

1.3.1 Consistent with guidelines provided by Ministry of Agriculture "Guide to Edge Planning" and the ALC report "Landscape Buffer Specifications" or its replacement;

1.3.2 Incorporate landscaping that reinforces the character of agricultural lands. A majority of plant material selected should include low maintenance, indigenous vegetation;

1.3.3 Preserve all healthy existing mature trees located within the buffer area;

[6] City of Kelowna Official Community Plan - Chapter 5 - Development Process; pp. 5.33 & 5.34.
[7] City of Kelowna 2030 Official Community Plan (2011) - Farm Protection Development Permit Chapter; p. 15.2 - 15.4.

1.3.4 Integrate double rows of trees, including coniferous trees, and dense vegetation into the buffer;

1.3.5 Install and maintain a continuous fence along the edge of agricultural land. A permeable fence which allows for the movement of wildlife (i.e. split rail) in combination with dense and continuous evergreen hedge is preferred. Impermeable fencing will not be permitted.

1.4 On non-agricultural lands, design developments to protect the required landscape buffer from potential negative impacts related to on-site activities (i.e. drainage, recreational pathways, driveways);

1.7 Require statutory covenants on non-agricultural land at subdivision to notify landowners that "normal farm practices" occur in close proximity.

5.3 City of Kelowna Strategic Plan

Objective[8]: Sensitively integrate new development with heritage resources and existing urban, agricultural and rural areas.

Action towards this objective[9]: Evaluate the effectiveness of City policies and bylaws in preserving agricultural lands.

5.4 City of Kelowna Agriculture Plan

Urban Buffers

New developments adjacent to agricultural areas will be required to establish appropriate setbacks, fencing and landscape buffers on urban lands, as noted above, to mitigate potential conflict. In addition, for developments other than single or two family residential uses, there should be consideration of appropriate site planning measures that locate access roads, storage areas, or other spaces between agricultural lands and proposed buildings or public use areas.

In addition to the requirements for landscape buffers and fencing, it would be appropriate to consider the need for a covenant registered on the title, as part of the subdivision approval, that advises prospective buyers and land owners of the potential impacts of living near farm operations and conditions of the Farm Practices Protection (Right to Farm) Act. It may also be appropriate to support amendments to the Real Estate Act that requires disclosure to prospective buyers of these same conditions.

1. Defined Urban - Rural/Agricultural Boundary. Confirm support for the Agricultural Land Reserve and establish a defined urban - rural/agricultural boundary, as indicated on Map 14 - Urban - Rural/Agricultural Boundary, utilizing existing roads, topographic features, or watercourses wherever possible;

2. Farmland Preservation. Direct urban uses to land within the urban portion of the defined urban - rural / agricultural boundary, in the interest of reducing development and speculative pressure, toward the preservation of agricultural lands and discourage further extension of existing urban areas into agricultural lands;

4. Landscape Buffer Specifications and Fencing Specifications. Amend the Zoning Bylaw to include setbacks and landscape buffer and fencing requirements consistent with the Land Commission specifications, with consideration for minimum setback requirements at standard

[8] City of Kelowna Strategic Plan (2004); p. 7.
[9] City of Kelowna Strategic Plan (2004); p. 29.

road or half road widths to support the potential need for future road, park, or public access corridors;

5. Bonding. Require the provision of bonding for landscape buffer and fencing requirements adjacent to agricultural lands at the time of rezoning, subdivision, and/or building permit, in accordance with the Municipal Act;

6. Urban Buffers. Require new development, adjacent to agricultural areas, to establish setbacks, fencing and landscape buffers on the urban side of the defined urban - rural/agricultural boundary;

7. Site Planning Measures. Consider the use of site planning measures such as locating internal access roads, storage areas, or other appropriate spaces between agricultural lands and proposed buildings or public use areas, for developments requiring a Development Permit;

8. Covenants. Consider the need for a covenant registered on the title, as part of a subdivision approval, that advises prospective buyers and land owners of the potential impact of living near farm operations and the conditions of the Farm Practices Protection (Right to Farm) Act;

12. Parcel Size: Agricultural Land. Discourage the subdivision of agricultural land into smaller parcels, except where positive benefits to agriculture can be demonstrated.

6.0 Technical Comments

6.1 Development Engineering Department

See attached.

6.2 Infrastructure Planning

The subject property shares a boundary line with Munson Pond Park (e.g. north property line). In order to manage the private/public interface, a fence should be constructed on the northern property line (min. 6" within the private property). The City's standard for fencing is 4' high black chain link fence.

6.3 Shaw Cable

Owner/developer to supply and install an underground conduit system.

6.4 Subdivision Approving Officer

- DCC payable at subdivision stage and must be paid prior to final subdivision sign off.
- Subject to engineering requirements

7.0 Application Chronology

Date of Application Received: October 1, 2012

Agricultural Advisory Committee: November 8, 2012

The above noted application was reviewed by the AAC and the following recommendation was passed:

MOVED BY Leo Gebert/SECONDED BY Gill Green

THAT the Agricultural Advisory Committee support Rezoning Application No. Z12-0065, for 1650 KLO Road, to rezone the subject property from the A1 Agriculture 1 zone to the RR1 - Rural Residential 1 and RR3 - Rural Residential 3 zones in order to facilitate a future two lot subdivision.

DEFEATED
Gill Green, Yvonne Herbison, Pete Spencer, Pierre Calissi - Opposed

Anecdotal Comments:

The AAC did not support the proposed rezoning (Z12-0065) as it was generally felt that the land has been and continues to be suitable for agriculture with some improvements and should not be excluded from the ALR. Burtch Road provides an important buffer between urban and rural uses at present. The AAC also felt that the orientation of the proposed subdivision (i.e. north/south) did not make sense as the less viable (i.e. degraded) land was demonstrated to be in the northern portion (i.e. east/west).

While the AAC did not support the proposed rezoning it was felt that the following be considered/dealt with to ensure that the future use of the remainder agricultural land not be impeded if the use is supported:

- That rehabilitation of the degraded land be required prior to rezoning being granted.
- That the density of residential development on the future non-ALR parcel not be excessive.
- That buffering on the future non-ALR parcel should be consistent with the ALC's A.3: Airborne Particle and Visual Screen buffering requirements (see attached) at a minimum and which includes yearly (coniferous) and seasonal (coniferous/deciduous), trespass inhibiting shrubs and a solid wood fence.
- The AAC also suggested that urban agriculture opportunities for future residents of the non-ALR land be required onsite.

Report prepared by:

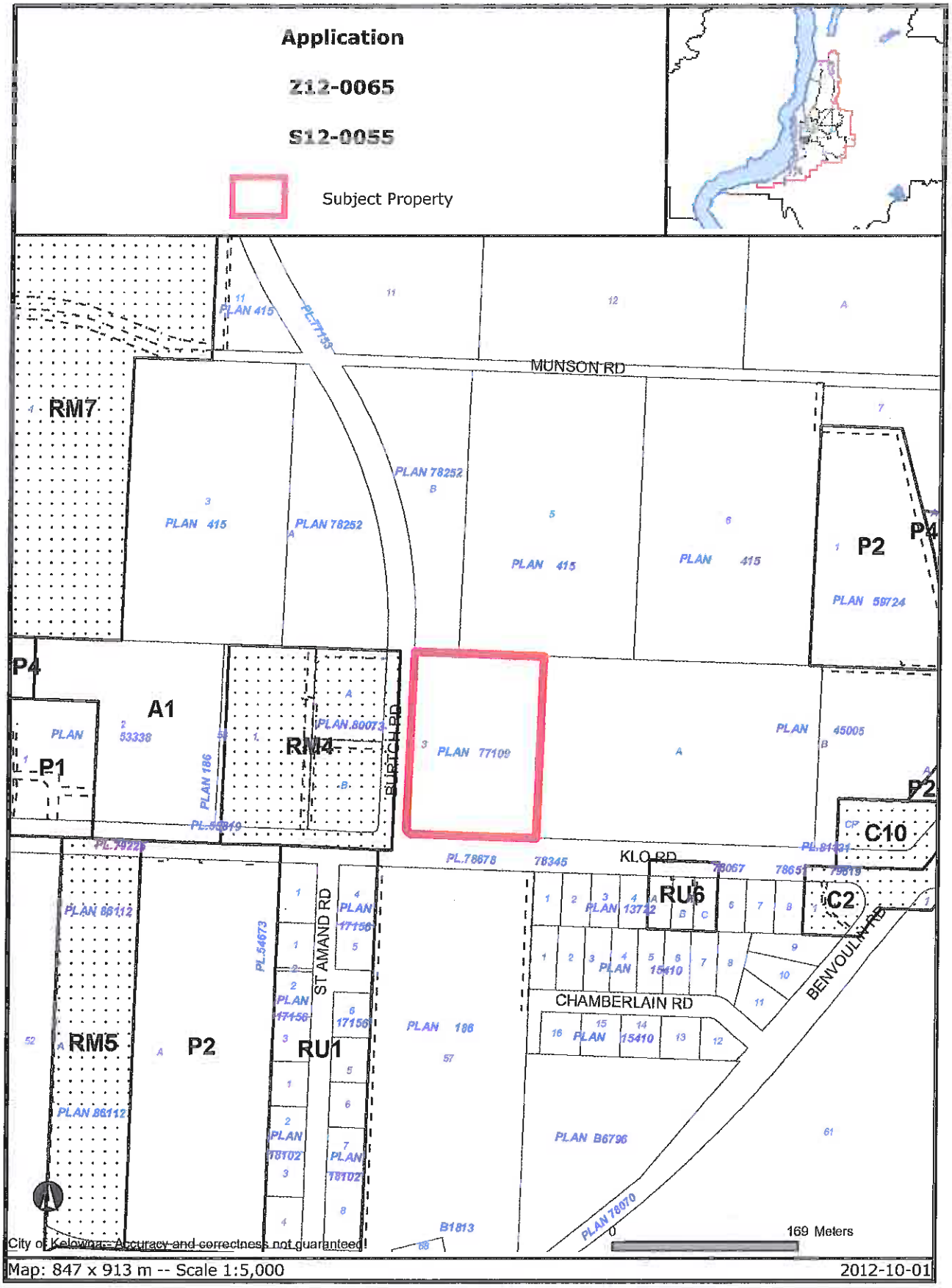
Greg Sauer, Land Use Planner

Reviewed by: Todd Cashin Manager, Manager, Environment & Land Use

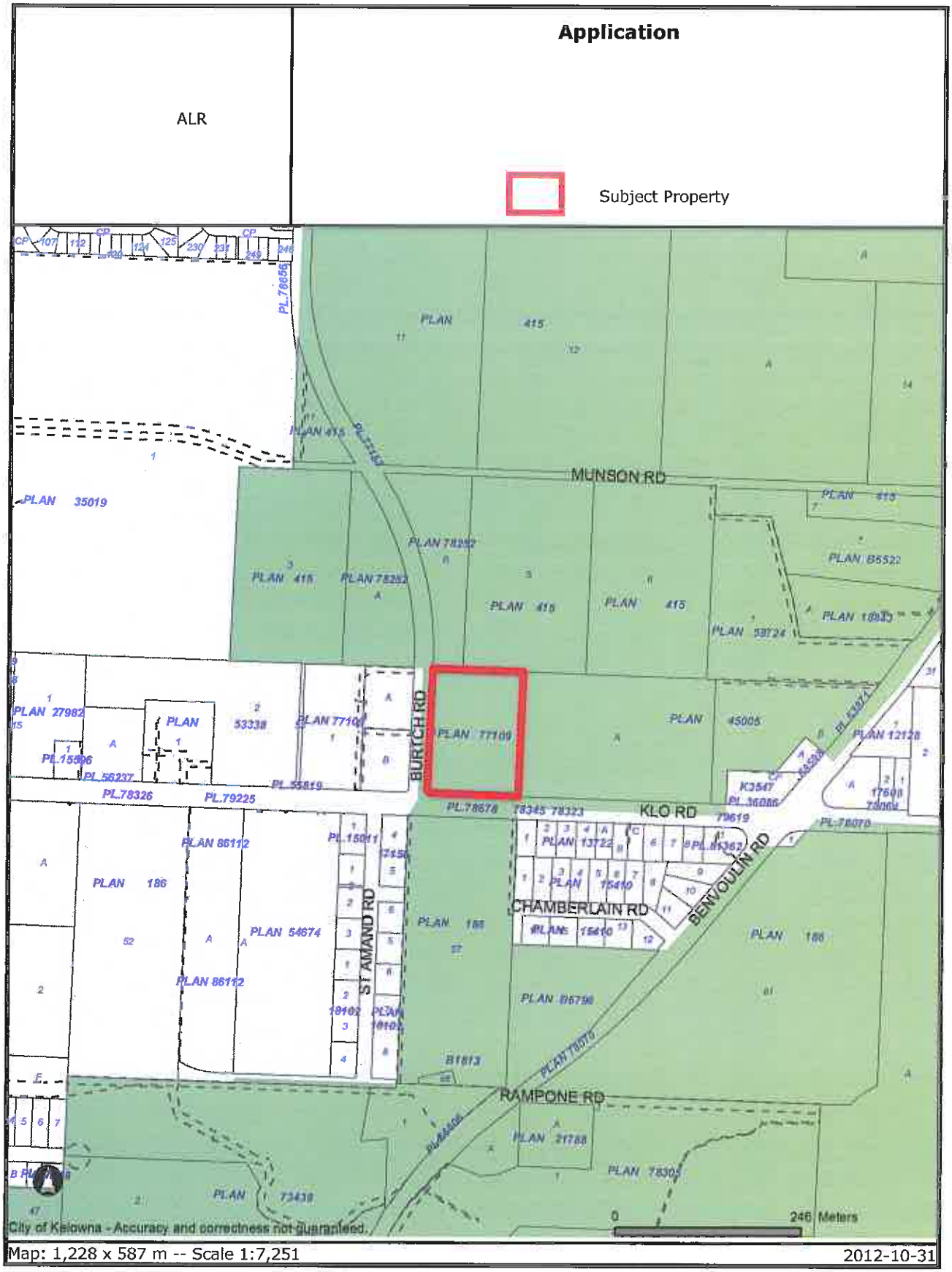
Approved for Inclusion: Shelley Gambacort, Director, Land Use Management

Attachments:

Subject property/zoning map & ALR map (2 pages)
Map "A" (1 page)
Site Plan (1 page)
Development Engineering Memo (2 pages)
ALC Correspondence (15 pages)



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.



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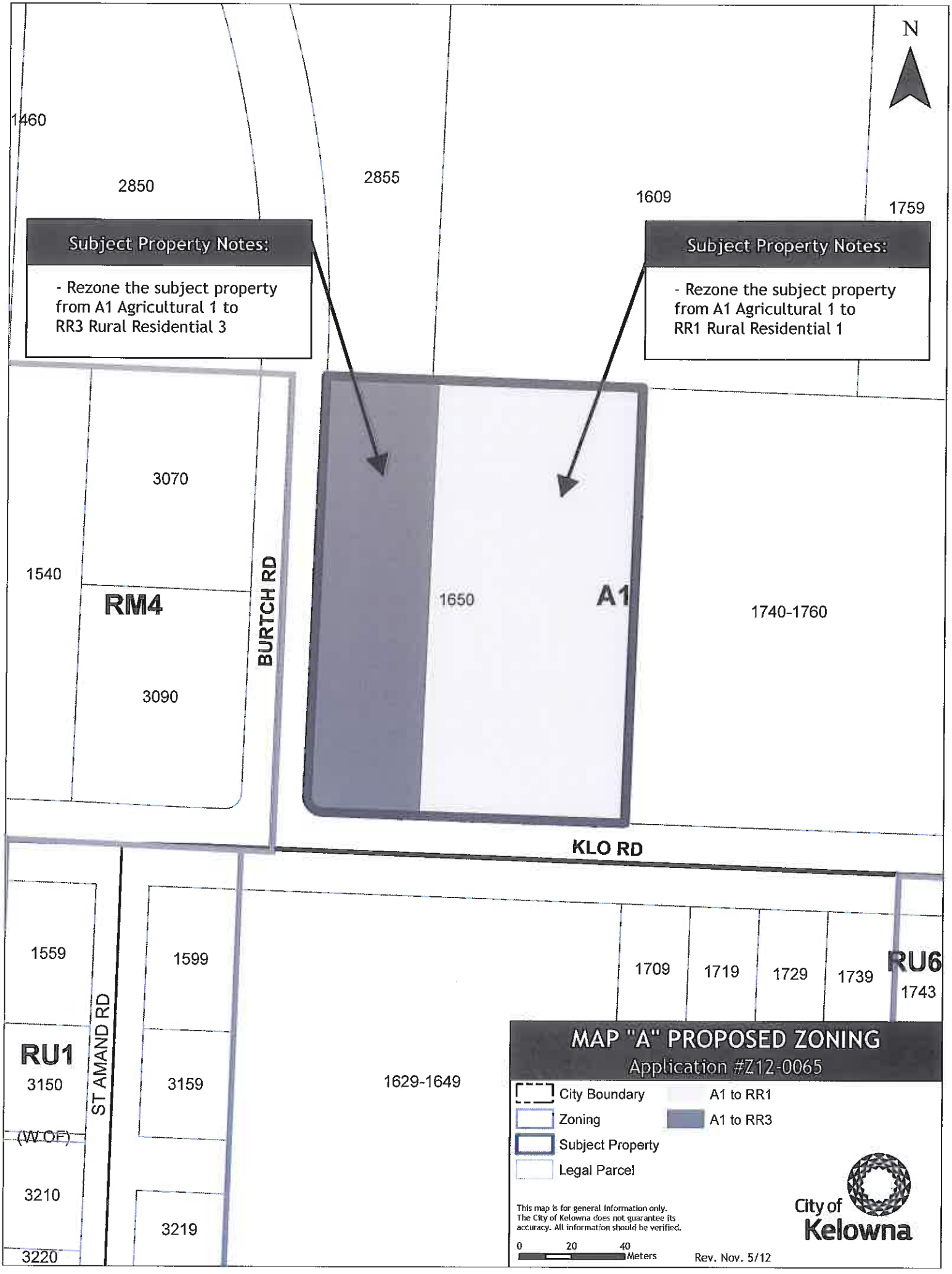
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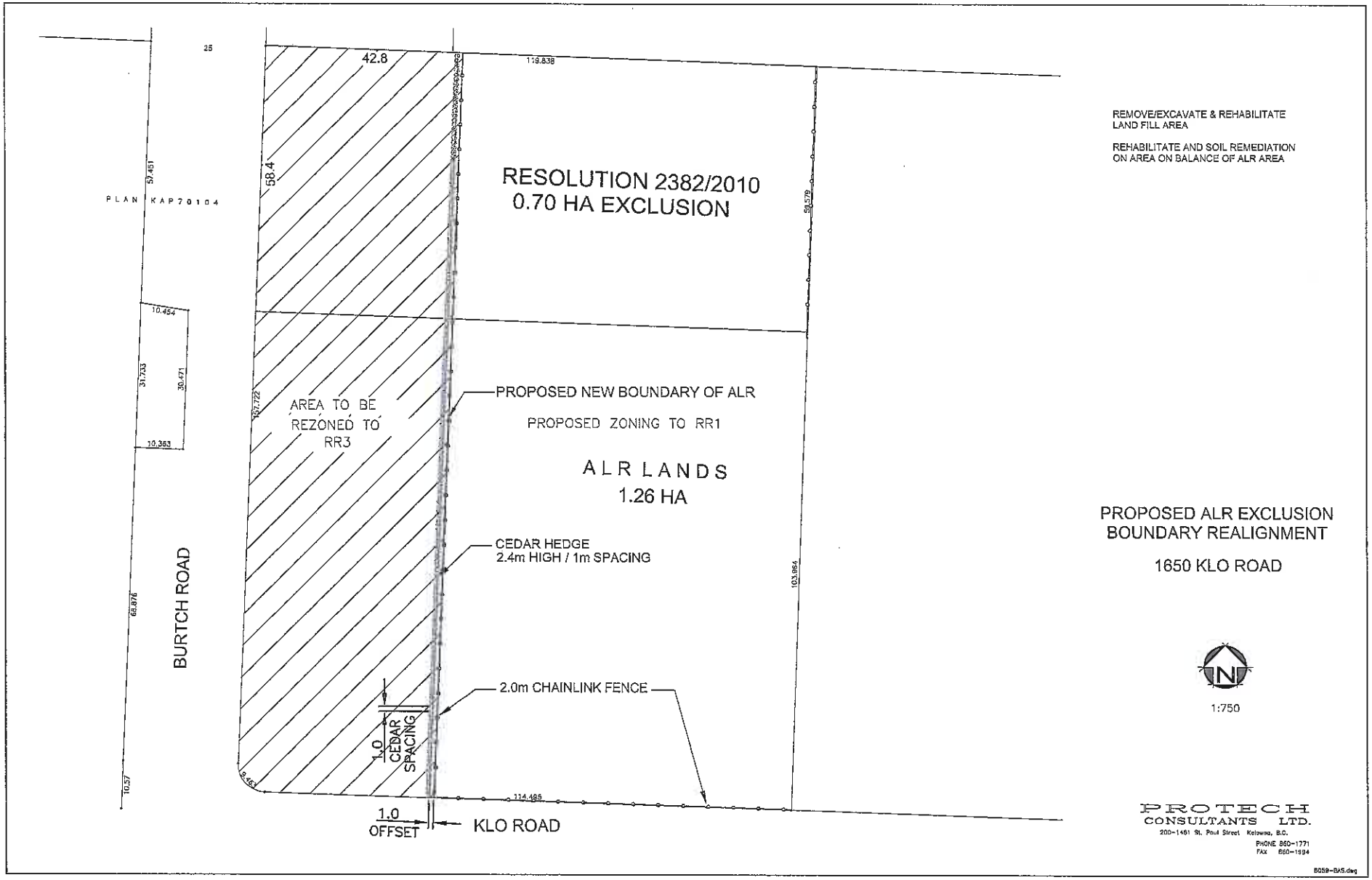
1460
2850
2855
1609
1759
Subject Property Notes:
- Rezone the subject property from A1 Agricultural 1 to RR3 Rural Residential 3
Subject Property Notes:
- Rezone the subject property from A1 Agricultural 1 to RR1 Rural Residential 1
3070
1540
RM4
3090
BURTCH RD
1650
A1
1740-1760
KLO RD
1559
1599
1709
1719
1729
1739
RU6
1743
RU1
3150
ST AMAND RD
3159
1629-1649
(W OF)
3210
3219
3220
MAP "A" PROPOSED ZONING
Application #Z12-0065
City Boundary
Zoning
Subject Property
Legal Parcel
A1 to RR1
A1 to RR3
This map is for general information only.
The City of Kelowna does not guarantee its accuracy. All information should be verified.
0 20 40 Meters
Rev. Nov. 5/12
City of Kelowna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119.838
58.4
RESOLUTION 2382/2010
0.70 HA EXCLUSION
59.578
PLAN KAP70104
57.451
10.464
31.733
30.471
10.363
AREA TO BE
REZONED TO
RR3
PROPOSED NEW BOUNDARY OF ALR
PROPOSED ZONING TO RR1
ALR LANDS
1.26 HA
CEDAR HEDGE
2.4m HIGH / 1m SPACING
BURTCH ROAD
68.876
10.57
103.964
2.0m CHAINLINK FENCE
1.0
CEDAR
SPACING
9.453
114.495
1.0
OFFSET
KLO ROAD
REMOVE/EXCAVATE & REHABILITATE
LAND FILL AREA
REHABILITATE AND SOIL REMEDIATION
ON AREA ON BALANCE OF ALR AREA
PROPOSED ALR EXCLUSION
BOUNDARY REALIGNMENT
1650 KLO ROAD
N
1:750
PROTECH
CONSULTANTS LTD.
200-1461 St. Paul Street Kelowna, B.C.
PHONE 860-1771
FAX 860-1994
5059-BAS.dwg

CITY OF KELOWNA

MEMORANDUM

Date: November 13, 2012
File No.: Z12-0065

To: Land Use Management Department (GS)

From: Development Engineering Manager

Subject: 1650 KLO Road **Updated drawing** A1 to RR1/ RR3

Development Engineering Services have the following requirements associated with this rezoning application;

1. Domestic Water and Fire Protection

   This property is not currently serviced. According to the Subdivision, Development and Servicing Bylaw 7900 it is a requirement for the RR1 & RR3 zone that the property be serviced by City of Kelowna water.

2. Sanitary Sewer

   This property is not currently serviced. According to the Subdivision, Development and Servicing Bylaw 7900 it is a requirement for the RR3 zone that the proposed RR3 lot be serviced by City of Kelowna sanitary sewer. Abandon and backfill existing septic tanks in accordance with Building Department requirements.

   The property is located in Sewer Connection Area No 25(Chamberlain) and therefore, all parcels to be created will be subject to the fee for this service. The Sewer Connection Area No 25(Chamberlain) Area fee is **$3,149.38**/EDU.

3. Roads

   Burtch Road must be upgraded to a full urban standard including curb and gutter, sidewalk, pavement, street lights, and adjustment and/or re-location of existing utility appurtenances if required to accommodate this construction.

4. Electric Power and Telecommunication Services

   If the existing area is served by overhead wiring, the service connections may be provided overhead provided that there are no new poles required and service trespasses will not be created. If either of these conditions is not satisfied, then underground service will be required for that lot.

   Streetlights must be installed on all roads.

   Make servicing applications to the respective Power and Telecommunication utility companies. The utility companies are required to obtain the City's approval before commencing construction.

   Before making application for approval of your subdivision plan, please make arrangements with Fortis for the pre-payment of applicable charges and tender a copy of their receipt with the subdivision application for final approval.

Re-locate existing poles and utilities, where necessary. Remove aerial trespass (es).

5. Servicing Agreements for Works and Services

A Servicing Agreement is required for all works and services on City lands in accordance with the Subdivision, Development & Servicing Bylaw No. 7900. The applicant's Engineer, prior to preparation of Servicing Agreements, must provide adequate drawings and estimates for the required works. The Servicing Agreement must be in the form as described in Schedule 2 of the bylaw.

Part 3, "Security for Works and Services", of the Bylaw, describes the Bonding and Insurance requirements of the Owner. The liability limit is not to be less than $5,000,000 and the City is to be named on the insurance policy as an additional insured.

6. Charges and Fees

Sewer Connection Area No 25(Chamberlain) fee of **$3,149.38**.

Steve Muenz, P. Eng.
Development Engineering Manager

SS

Agricultural Land Commission
133–4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

December 17, 2008

Reply to the attention of Brandy Ridout
ALC File: **G-38500**

Gary Feeny
Danco Developments Ltd
3142 Dunster Road
Kelowna, BC V1W4H3

Dear Mr. Feeny:

Re: Application to Exclude land from the Agricultural Land Reserve

Please find attached the Minutes of Resolution #760/2008 outlining the Commission's decision as it relates to the above noted application.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Erik Karlsen, Chair

Enclosure: Minutes

cc: City of Kelowna (A07-0012)

MC/
i/38500d1

MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on November 28, 2008 at the offices of the Regional District of Okanagan-Similkameen located at 101 Martin Street, Penticton, BC.

PRESENT:	Roger Mayer	Chair, Okanagan Panel
	Sid Sidhu	Commissioner
	Gerald Zimmermann	Commissioner
	Martin Collins	Staff

For Consideration

Application:	#G-38500
Applicant:	Danco Developments Ltd.
Proposal:	To exclude the 2 ha subject property from the ALR to construct medium to high density residential units.
Legal:	PID: 026-155-427 Lot 3, District Lot 131, Osoyoos Division Yale District, Plan KAP77109
Location:	1650 KLO Road, Kelowna

Site Inspection

A site inspection was conducted on November 26, 2008. Those in attendance were:

- Roger Mayer — Chair, Okanagan Panel
- Sid Sidhu — Commissioner
- Gerald Zimmermann — Commissioner
- Martin Collins — Staff
- Gary Feeny — Applicant
- Grant Maddock — Surveyor
- Catherine Orban — Soil specialist
- Jim Woods — Eastwood Farms (across KLO Road)

Mr. Feeny confirmed that the staff report dated November 18, 2008 was received and no errors were identified.

The Commissioners viewed the property with Catherine Orban, noting that the area closest to KLO Road had been filled, to a relatively shallow depth of less that one metre, potentially with sandy road bed material from a past widening of KLO Road. In addition, the Commission viewed the 0.5 ha northerly portion of the property, confirming that filling of concrete and construction material had occurred in this area over past decades (possibly prior to the establishment of the ALR).

Jim Woods of Eastwood Farms indicated that he farmed the subject property for several years and that his yield was significantly less on this property than on the home farm. The soils are sandier and require more water and fertilizer.

The Commission also noted that the adjoining 4 ha farm parcel lying to the east was cultivated.

...2

Context

The proposal was weighed against the purposes of the Commission as stipulated in section 6 of the *Agricultural Land Commission Act* (the "Act"). They are:

1. to preserve agricultural land
2. to encourage farming on agricultural land in collaboration with other communities of interest, and
3. to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

Discussion

Assessment of Agricultural Capability

In assessing agricultural capability, the Commission refers in part to agricultural capability mapping and ratings. The ratings are interpreted using the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system. According to this system, the agricultural capability of the soil of the majority of the subject property is 70% Class 2 and 30% Class 3 with limitations of excess water and low fertility characteristics.

Class 2 – Land in this class has minor limitations that require good ongoing management practices or slightly restrict the range of crops, or both.
Class 3 – Land in this class has limitations that require moderately intensive management practices or moderately restrict the range of crops, or both.

The Commission reviewed a Soils Onsite Report by Catherine Orban (M.Sc., P.Ag.) submitted with the application. The report indicates that approximately 0.8 ha (40%) of the property has Class 4 (70%) and Class 5 (30%) unimprovable capability. Approximately 0.7 ha (36%) of the property has Class 6 unimprovable capability. The remaining 0.5 (24%) has anthropogenic alterations that leave it unimprovable and unsuitable for agricultural use. The potential agricultural development and management of the property is constrained by excess moisture and high groundwater levels. The potential for improvements to drainage is severely inhibited by the technical and logistical issues associated with the ongoing disposal of excess water in an urban area with high groundwater levels. The report concludes by indicating that the property may be suitable for small greenhouses and/or a container nursery. However, it is not considered to be suitable for cultivation or livestock production.

The Commission discussed the report and confirmed that the majority of the property has challenges for certain types of soil bound agriculture due to a high water table (in spring), and that the northerly 0.5 ha portion of the property has severe limitations for agricultural use due to past filling. However the Commission did believe that the property could be cultivated and that with careful management ground crops could be grown. Alternately the parcel has potential to be developed as a small agricultural property with a residence and pasture for livestock or as a container or greenhouse operation. The Commission also indicated that the debilitated area would be ideal for a homesite and yard area, or alternately for parking and structures in conjunction with a nursery/greenhouse operation.

Assessment of Agricultural Suitability

The Commission assessed whether factors such as encroaching non-farm development have caused or will cause the land to become unsuitable for agriculture. The Commission admitted that adjoining high density residential development to the west has two effects on the potential agricultural development of the property. Firstly it raises the potential that farm/residential conflicts will arise about smells, noise and spraying if agricultural development occurs. Secondly it raises expectations that land use change is imminent. However, in the Commission's opinion, Burtch Road represents a defensible boundary between urban and agricultural uses and the land is suitable for agricultural development.

Assessment of Impact on Agriculture

The Commission also assessed the impact of the proposal against the long term goal of preserving agricultural land. The Commission was concerned that exclusion and residential development of this property would signal to Kelowna's development community that the Commission might support excluding the remaining farmlands fronting onto KLO and Benvoulin Roads. The result would be the purchase or optioning of ALR land by developers and the decline (or prevention) of agricultural investment. In particular, the 5 ha ALR property lying directly to the east would also come under pressure to be excluded. The Commission reconfirmed its support for the City of Kelowna's agriculture plan which shows the subject property (and the adjoining parcel) designated for "agriculture".

Assessment of Other Factors

The Commission recalled its decision to include the northern 0.7 ha portion of the property into the ALR was as a condition of Resolution #490/2001 which permitted the dedication and construction Burtch Road. The purpose of the inclusion and consolidation was to compensate for the loss of 3.3 ha to Burtch Road, to increase the size of Lot 2 to a more appropriate agricultural size, and to limit urban encroachment simplifying and straightening the ALR boundary in this area. Its concern was that the non ALR 0.7 ha area would be developed for intensive residential uses and negatively affect the smaller farm property.

Conclusions

1. That the land under application has agricultural capability, is appropriately designated as ALR, and is suitable for agricultural use.
2. That the proposal will negatively impact agriculture.
3. That the proposal is inconsistent with the objective of the *Agricultural Land Commission Act* to preserve agricultural land.

IT WAS
MOVED BY: Commissioner S. Sidhu
SECONDED BY: Commissioner R. Mayer

THAT the application to exclude the 2 ha subject property from the ALR to construct residential condominium units be refused on the grounds the land is suitable for agricultural uses.

AND THAT the applicant be advised of the provisions of Section 33 of the *Agricultural Land Commission Act* which provides an applicant with the opportunity to submit a request for reconsideration.

S.33 (1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that
(a) evidence not available at the time of the original decision has become available,
(b) all or part of the original decision was based on evidence that was in error or was false.
(2) The commission must give notice of its intention to reconsider a decision under subsection (1) to any person that the commission considers is affected by the reconsideration.

AND THAT the applicant be advised that a revised proposal does not constitute new information and will not be considered as a basis for reconsideration and the time limit for submitting a request for reconsideration is one (1) year from the date of the decision letter.

CARRIED
Resolution #760/2008

Agricultural Land Commission
133–4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

April 15, 2010

Reply to the attention of Martin Collins
ALC File G-38500

Grant Maddock,
Protech Consultants Ltd.
#200 - 1461 St Paul St.
Kelown, B.C.
V1Y 2E4

Dear Sir:

Re: Request for Reconsideration

This is further to your letter of December 8th, 2010 in which you asked the Provincial Agricultural Land Commission to reconsider Resolution #655/2007.

The Commission has reconsidered the matter and has attached the Minutes of Resolution #2382/2010 and a sketch plan outlining its latest decision. As agent, it is your responsibility to notify your client(s) accordingly.

Please send two (2) paper prints of the final survey plans to this office along with three copies of the required covenants. When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the plan. It will also confirm for the Registrar the area excluded from the ALR.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:

Erik Karlsen, Chair

cc: City of Kelowna (file: A07-0012)

Enclosure: Minutes/Sketch Plan

MINUTES OF THE PROVINCIAL AGRICULTURAL LAND COMMISSION

A meeting was held by the Provincial Agricultural Land Commission on March 16, 2010 in Kelowna, BC.

PRESENT:	Roger Mayer	Chair, Okanagan Panel
	Gerald Zimmerman	Commissioner
	Martin Collins	Staff
	Brandy Ridout	Staff

For Consideration

A letter from Grant Maddock of Protech Consultants dated December 8, 2009 was received requesting that the Commission reconsider its decision to refuse the exclusion of 2 ha from the ALR - recorded as Resolution #760/2008. Accompanying the letter were various reports indicating that the 0.7 ha northerly portion of the parcel had been debilitated as a landfill prior to the establishment of the ALR, and the 2004 inclusion of the land into the ALR (up to 9,000 cubic meters of landfilled municipal waste).

Application:	38500
Applicant:	Danco Developments
Agent:	Grant Maddock, Protech Consultants
Original proposal:	To exclude 2 ha from the ALR for high density residential development.
Original decision:	Refuse as proposed
Current proposal:	To exclude 2 ha for high density residential development
Legal:	PID 026 155 427 Lot 3, DL 131 ODYD, Plan KAP 77109
Location:	KLO Road

Context

The proposal was considered under Section 33 of the Agricultural Land Commission Act (the "Act") which states:

S33(1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that
- (a) evidence not available at the time of the original decision has become available,
- (b) all or part of the original decision was based on evidence that was in error or was false, or
- (c) a recommendation by a facilitator under section 13 relating to a dispute warrants a reconsideration of the original decision.

The Commission believed that the applicant had provided evidence that was not available at the time of the original decision and so reconsidered the application.

Discussion

The Commission reviewed the following information;

1) Protech Consultants December 8, 2009 letter;
2) June 12, 2009 letter from Jim and Lorena Wood of Eastwood Orchards providing information about previous agricultural activity undertaken on the 2 ha property from 1997 to 2001;
3) Catherine Orban's (P. Ag.) December 3, 2009 letter to Gary Feeny;
4) James Richards (P. Ag) December report to Danco Developments;
5) Trash removal estimate from Affordable trash-all.com Ltd.

The applicant's primary rationale for exclusion is that the northerly ~ 0.7 ha portion of the property cannot be used for agriculture because of its past use as a landfill site. In addition there has been deposition of sand and other material (salt from snow deposit) on the remainder, particularly on the southern and western edges which may have damaged the land's soil capability for cropping.

The Commission discussed the reports and recalled the rationale for the decision to include the 0.7 ha northerly portion of the property into the ALR. It noted that it had been aware of the fill material on the northerly portion but believed that the fill would help mitigate the low lying wet area and potentially serve as a suitable homesite and yard for a small farm operation. Alternately it might be a suitable site for a non soil bound agricultural activity, such as a greenhouse or a container nursery operation. It recalled that no soil testing was undertaken at the time of inclusion.

In view of the extensive landfill contamination of the ~ 0.7 ha area lying north of the drainage ditch the Commission agreed that the exclusion of this area from the ALR was warranted.

However the Commission still believed that there was merit in retaining the 1.3 ha remainder within the ALR. While it was acknowledged that there were challenges to soil bound agriculture on the 1.3 ha remnant, the Commission does not believe that these are insurmountable, and that the property could be used as a hobby farm, market garden or nursery. Its other concerns are that the exclusion and conversion of the property to high density urban residential uses are inconsistent with its mandate and with local government planning. Furthermore the Commission believed that the impacts of urban development would have the result of negatively affecting, or eliminating, the agricultural potential of the adjoining property to the east, raising expectations of further land use change on KLO road.

The Commission believed that fencing the excluded area and the remainder is also important to help discourage trespass and further dumping.

IT WAS
MOVED BY: Commissioner R. Mayer
SECONDED BY: Commissioner G. Zimmerman

THAT for the purposes of Section 33(2) of the *Agricultural Land Commission Act*, there are no persons it considers affected by the reconsideration.

AND THAT the request to exclude the 2 ha subject property from the ALR be refused.

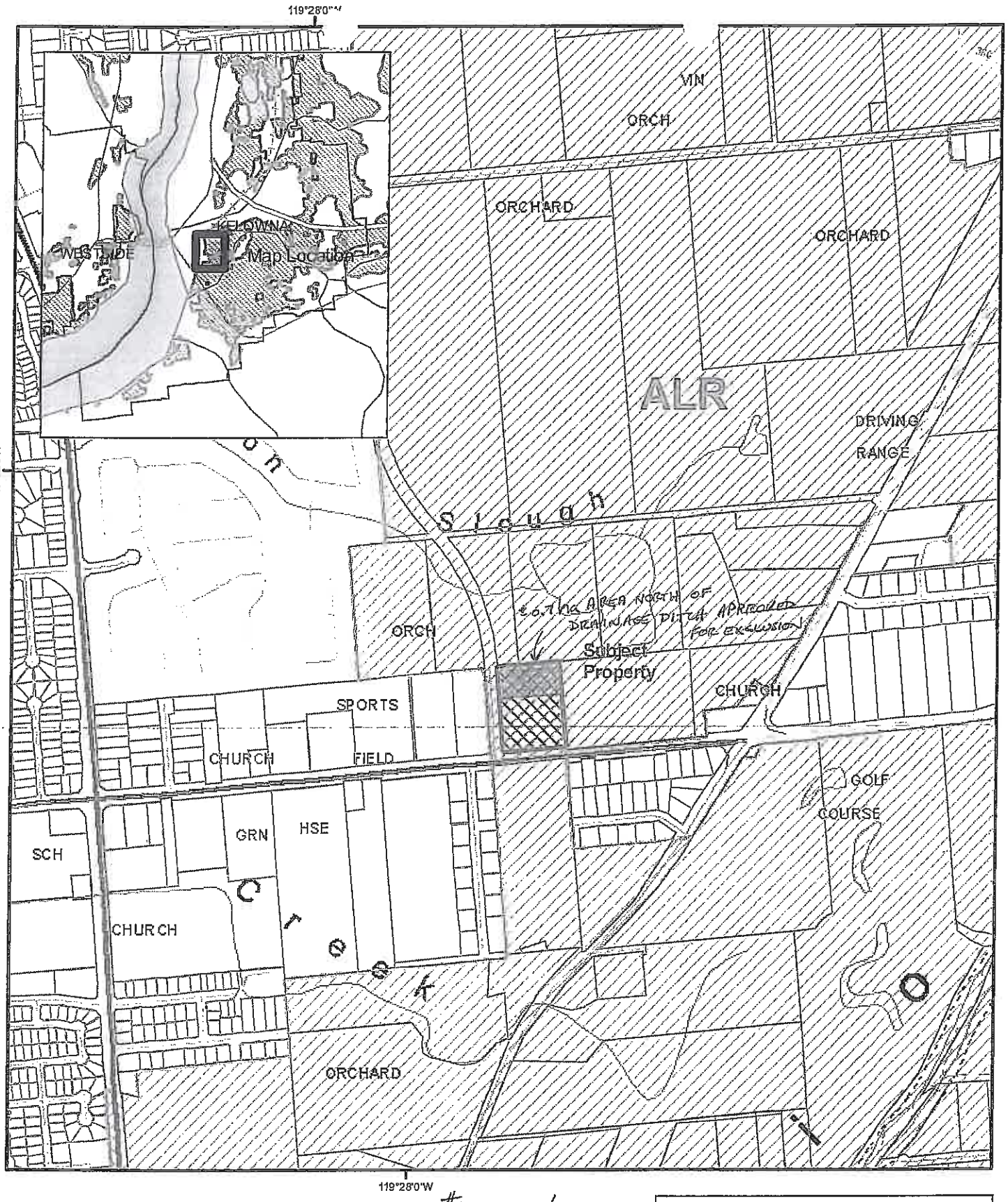
However, the Commission indicated that it was prepared to allow the exclusion of the ~ 0.7 ha lying north of the drainage ditch, subject to the following conditions;

- the preparation of a subdivision plan to delineate the area to be excluded per the attached drawing,
- the rehabilitation of the debilitated portions of the 1.3 ha remainder. The Commission requires the submission and approval of a soils remediation plan prepared by an agrologist who is also a soils specialist.
- The erection of a 2 meter high chain link fence along the north, south and east boundaries of the 0.7 ha excluded area, and fencing the westerly and southerly edge of the remainder to discourage trespass and unauthorized dumping
- The planting of a cedar hedge along the south and east boundary (minimum 1 meter high trees along the inside of the fence).
- Residential building setbacks of 10 meters from the south property boundary,
- the subdivision and development must be completed within three (3) years from the date of this decision.

And that as it has now been over a year since the Commisison's original decision the Commission considers this application to be closed. Any further proposals involving the subject property must be made by way of a new application.

This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

CARRIED
Resolution # 2382/2010



RESOLUTION #2382/2016
APPROVED ±0.7ha EXCLUSION

Context Map

Map Scale: 1:10,000

100 0 100 200 300 400 500

Meters

ALC File #:	02-2008-38500
Mapsheet #:	82E.083
Map Produced:	Sep 24, 2008
Regional District:	Central Okanagan

Agricultural Land Commission
133–4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

December 2, 2010

Reply to the attention of Martin Collins
File: G-38500

Gary Feeny
3142 Dunster Rd
Kelowna B.C.
V1W4H3

Re: Reconsideration of File: G-38500

Thank you for your e-mail received November 16th, 2010 which requested that the 0.7 ha exclusion area conditionally permitted by Resolution # 2382/2010 be reconfigured so that it borders Burtch Road for its length.

Although the Commission noted that the overall area proposed for exclusion was not increased, it expressed concern about the potential negative impacts of higher density residential uses on the 1.3 ha remainder, since the amended configuration may require less land for vehicle access than the original configuration. There was also concern about;

- potential for shading from a taller, multi-storey structure,
- increased potential for agriculture/residential conflict,
- the difficulty of soil rehabilitation on portions of the contaminated fill site due to historic land disturbance and the necessity of extensive movement (and deposit) of soils.

In view of the above, this is to advise that although the Agricultural Land Commission has no objection to the reconfiguration of the exclusion area as noted on the attached map, subject to the conditions stipulated by Resolution #2382/2010, it requires an additional condition that a covenant be registered against the title of the excluded 0.7 ha parcel limiting the height of any structure to two storeys. The purpose of the condition is limit the negative impacts of multi-storey residential development on the 1.3 ha remainder.

To reiterate, the Commission allowed the exclusion of 0.7 ha, as per Resolution 2382A/2010, subject to:

- The preparation of a subdivision plan to delineate the area to be excluded per the attached drawing.
- The rehabilitation of the debilitated portions of the 1.3 ha remainder. The Commission requires the preparation and submission of a soils remediation plan prepared by an agrologist who is also a soils specialist which describes how the land will be reclaimed to the same or better standard as prior to debilitation. Upon completion of the rehabilitation a closure report from the same agrologist is also required to confirm the rehabilitation.
- The erection of a 2 meter high chain link fence around the perimeter of the 1.3 ha agricultural remainder and the northwest edge of the exclusion area to Burtch Road.
- The planting of a cedar hedge along the east and north boundary of the excluded area (minimum 1 meter high trees on a 1 meter spacing along the inside of the fence).

....2

- The registration of a covenant prohibiting residential structures within 10 meters from the east and north property boundary, and prohibiting structures greater than two storeys in height.
- the conditions of approval must be completed within three (3) years from the date of this decision.

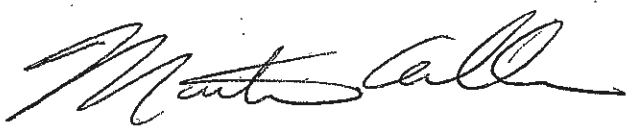
If you wish to proceed on the basis of the above, upon confirmation of completion of the agricultural rehabilitation, fencing, vegetative buffer, and the registration of the covenant, the 0.7 ha area bordering Burtch Road will be excluded from the ALR.

Nothing in this decision relieves the owner or occupier of the responsibility to comply with applicable Acts, regulations and bylaws of local government, and decisions and orders of any person or body having jurisdiction over the land under the enactment.

If you have any further questions about this matter, please contact this office.

Yours truly

PROVINCIAL AGRICULTURAL LAND COMMISSION

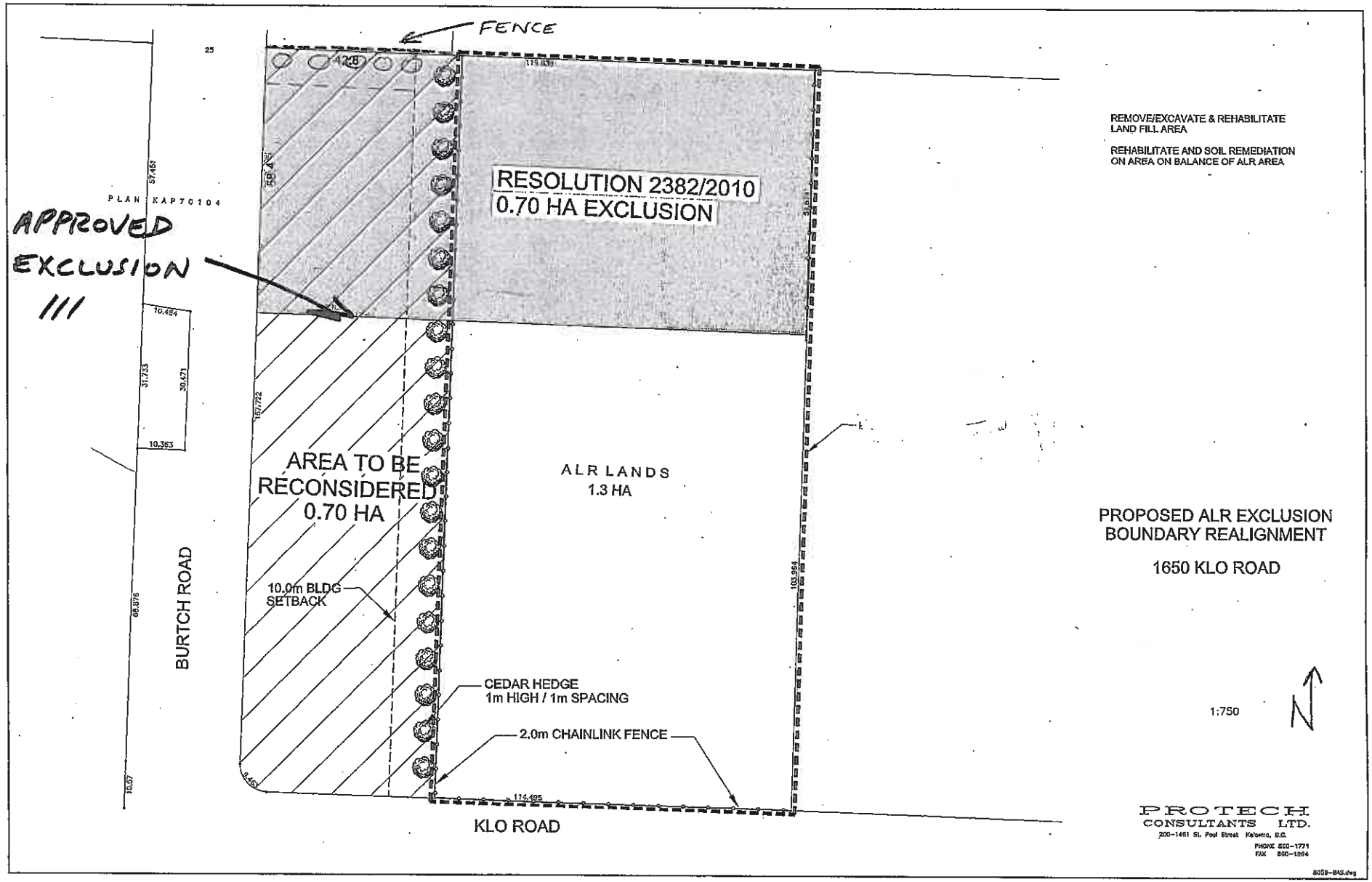
Per 

Brian Underhill, Executive Director

enclosure

cc: City of Kelowna file: (A07-0012)

SKETCH PLAN - RESOLUTION #2382 A / 2010



FILE : 38500

AMENDED CONFIGURATION RES # 2382A/2010
INCLUDING FENCING & BUFFERING

Agricultural Land Commission
133--4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

March 1, 2011

Reply to the attention of Martin Collins
File: G-38500

Gary Feeny
3142 Dunster Road
Kelowna, B.C.
V1W 4H4

Dear Sir

Re: 1650 KLO Road - Lot 3, DL 131, ODYD, Plan KAP77109

Thank you for your letter dated February 15, 2011 and the attached sketch which provided information indicating that a three storey structure would not excessively shade the adjoining farmland provided it was set back from the west property boundary by 16.74 meters.

Based on this the Agricultural Land Commission would be prepared to permit the construction of a three storey structure on the excluded parcel subject to the conditions stipulated by Resolution #2382A/2010, and the amended condition that the required covenant prohibit the building of residential structures within 16.74 meters from the east property boundary of the proposed 0.7 ha exclusion area.

However, be advised the Commission will require that the rehabilitation of the 1.3 ha remainder to be completed, including fencing, before excluding the 0.7 ha parcel from the ALR. A report must be submitted by a qualified professional agrologist, who is also a soils specialist, confirming that the land has been rehabilitated to an agricultural standard which permits cropping, and not merely forage crops. Irrigation infrastructure must also be provided. The vegetative buffering may be delayed until the landscaping of the excluded lot is completed, subject to the submission of a financial security in the amount necessary to plant the vegetative buffer.

If you have any further questions regarding this matter, please contact this office.

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Martin Collins, Regional Planner

City of Kelowna File: (A07-0012)